

## REMARKS

The last Office Action of January 8, 2007 has been carefully considered. Reconsideration of the instant application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-7 are pending in the application. Claim 1 has been amended. No claims have been canceled or added. Amendments to the specification have been made. No fee is due.

It is noted that the abstract is objected to because it exceeds 150 words. A new abstract is submitted herewith to overcome this rejection. With respect to the objection by the Examiner relating to the lack of respective headings and reference to particular claim numbers, the Examiner's attention is directed to pages 2 and 3 of applicant's previously filed preliminary amendment of October 3, 2005, which addressed these objections. The Examiner is respectfully requested to review the respective pages in the PAIR system. Paragraph [0007] has been amended however to delete the reference to reference numbers.

It is noted that claim 1 is objected to because of informalities. Claim 1 has now been amended, as suggested by the Examiner.

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 3,980,418 to Schott, Jr.

Claims 1-5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over German Offenlegungsschrift DE 198 43 340 (hereinafter "DE '340").

It is noted with appreciation that claims 6 and 7 are indicated allowable if rewritten in independent form to overcome the objection(s) set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims. However, applicant wishes to defer amendments to these dependent claims in view of the arguments presented below regarding amended claim 1.

### **REJECTION UNDER 35 U.S.C. §102(b)**

Claim 1 has been amended to clearly set forth that the segment blocks are fully enclosed by the housing. Support therefore can be found in Figs. 1 and 2.

The Schott, Jr. reference is directed to a guide assembly for an air-expanded thermoplastic tube issuing out of a die, whereby the precise dimension (diameter) of the tube is established before entering the guide assembly in a ring assembly where the tube is chilled. In other words, the guide assembly is not intended for a diameter calibration but merely to properly guide the tube. In addition, Schott, Jr. lacks the provision of a housing, as set forth in claim 1, now on file. As shown in particular in Fig. 1 in combination with Fig. 4, the guide members (20) are each connected to a structural ring (36) by an elongated arm. The structural ring, which the Examiner equates to the housing of the present invention, merely sits atop of the guide assembly, in the absence of a surrounding relationship to the guide members, let alone a full enclosure of the guide members.

For the reasons set forth above, it is applicant's contention that Schott, Jr. neither teaches nor suggests the features of the present invention, as recited in claim 1.

Withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b) is thus respectfully requested.

### **REJECTION UNDER 35 U.S.C. §103(a)**

Applicant respectfully disagrees with the Examiner's rejection of claim 1 for the following reason:

It is noted for the record that the DE '340 reference was cited in the introductory part of the instant specification and, consequently, was considered when drafting the original claims. It is believed that claim 1 is clearly distinguishable over this reference for reasons which will be hereinafter set forth.

Claim 1, on file, is directed to a calibration device which has a plurality of segment rings arranged to define a calibration opening. Each segment ring includes segments which are combined to a segment block that is arranged on a support structure. A housing fully encloses the segment blocks. Connected to each support structure is a mounting and operating device which is made of two parts, which are detachably connected to one another, whereby one part is connected with the support structure, and the other part is received in the housing, with both parts being detachable connected to one another.

As described in paragraph **[0030]** of the instant specification, the claimed two-part construction of the mounting and operating device is advantageous because of the simplified installation within the housing (cf. also paragraph **[0008]** of the instant specification).

The Examiner based the rejection of claim 1 on the contention that DE '340 discloses spindles that are made of two parts. The Examiner's interpretation of DE '340 is ill-advised because there is no disclosure in DE '340 of a two-part construction of the spindles. Paragraph **[0024]** of DE '340 instructive here and merely describes the provision of servomotors (45) which are jointly controlled to simultaneously adjust the lamellae rims. This is the extent of description between the spindles and the servomotors. Thus, DE '340 not only fails to disclose a two-part construction of the spindles but also fails to disclose, as the Examiner correctly noted, the detachable connection of two spindle parts. With respect to the latter claim limitation, the Examiner bridged the **absence** of teaching by taking Official Notice and submitting that this is "obvious to one of ordinary skill in the art.". Applicant believes that this reasoning is improper in the context of the present invention and requests a citation or an Examiner's affidavit that provides such citations. As stated by the Federal Circuit in *In re Lee*, 61 USPQ2d, 1434, 1435, "Common knowledge and common sense, even if assumed to derive from the agency's expertise, do not substitute for authority when the law requires authority.". The Court also stated that "The Board's findings must be documented on the record,".

It is clear from the specification that applicant recognized a problem facing the prior art, which relates to the difficulty to assemble the segments in the tubular housing because of the limited space available in the housing. The Examiner clearly failed to properly interpret DE '340 and to provide any grounds as to why in this particular case and based on the disclosure a person skilled in the art would consider the claim limitations relating to the particular two-part construction of the mounting and operating device as obvious.

For the reasons set forth above, it is applicant's contention that DE '340 neither teaches nor suggests the features of the present invention, as recited in claim 1.

As for the rejection of dependent claims 2-5, these claims depend on claim 1, share its presumably allowable features, and therefore it is respectfully submitted that these claims should also be allowed.

It should, however, be noted that claims 2-5 are further considered allowable on their own merits as they recite other features of the invention neither taught nor suggested by the applied prior art. Claims 2-5 recite particular constructions to establish the claimed two-part configuration of the mounting and operating device. The subject matter of claims 2-5 has not been properly addressed by the Examiner.

Withdrawal of the rejection of claims 1-5 under 35 U.S.C. §103(a) and allowance thereof are thus respectfully requested.

## **CITED REFERENCES**

Applicant has also carefully scrutinized the further cited prior art and finds it without any relevance to the claims on file. It is thus felt that no specific discussion thereof is necessary.

## CONCLUSION

Applicant believes that when reconsidering the claims in the light of the above comments, the Examiner will agree that the invention is in no way properly met or anticipated or even suggested by any of the references however they are considered.

In view of the above presented remarks and amendments, it is respectfully submitted that all claims on file should be considered patentably differentiated over the art and should be allowed.

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

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